

performing the search, *i.e.*, the operator, OMB will begin assessing charges for computer search.

[52 FR 49153, Dec. 30, 1987]

§ 1303.50 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The specific levels of fees for each of these categories are:

(a) *Commercial use requesters.* When OMB receive a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. OMB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 1303.60(b)).

(b) *Educational and non-commercial scientific institution requesters.* OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1303.10(j), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination func-

tion of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) *All other requesters.* OMB shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests for records about the requesters filed in OMB's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

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§ 1303.60 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* OMB may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by OMB within the thirty day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* OMB may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If OMB estimates that search charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When OMB reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to

break a request down into a series of requests for the purpose of evading the assessment of fees, OMB may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* OMB may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) OMB estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, OMB will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). Then, OMB may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

When OMB acts under paragraph (d) (1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.*, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after OMB has received fee payments described above.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* OMB should comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

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§ 1303.70 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

[52 FR 49155, Dec. 30, 1987]

PART 1304—POST EMPLOYMENT CONFLICT OF INTEREST

Sec.

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1304.4608 Administrative Enforcement Procedures (18 U.S.C. 207(j); 5 CFR 737.27).

AUTHORITY: Title V, Section 501(a), Pub. L. 95-521, as amended, 92 Stat. 1864; and Sections 1 and 2, Pub. L. 96-28, 93 Stat. 76 [18 U.S.C. 207]; 5 CFR 737.

SOURCE: 45 FR 84007, Dec. 22, 1980, unless otherwise noted.

§ 1304.4601 Purpose.

(a) This section sets forth OMB's policy and procedures under the Ethics in Government Act of 1978, 18 U.S.C. 207, and the Office of Personnel Management's implementing regulations, 5 CFR part 737, for determining violations of restrictions on post-employment activities and for exercising OMB's administrative enforcement authority.

(b) These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations. OMB acts on the premise that it has the primary responsibility for the enforcement of restrictions on post-employment activities and that criminal enforcement by the Department of Justice should be undertaken only in cases involving aggravated circumstances.

(c) These regulations do not incorporate possible additional restrictions